

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

|                  |   |                       |
|------------------|---|-----------------------|
| IN RE:           | ) |                       |
|                  | ) | Case No. 24-11967-JKS |
| BIG LOTS, et al. | ) |                       |
|                  | ) | Chapter 11            |
| Debtors.         | ) |                       |

**MOTION TO ALLOW LATE FILING OF OBJECTION OF  
JEWELL SQUARE, RLLP TO CURE AMOUNT**

Jewell Square, RLLP, by and through its counsel, Wadsworth Garber Warner Conrardy, PC, for its Motion to Allow Late Filing of Objection to Cure Amount respectfully states as follows:

**BACKGROUND**

1. The above captioned Debtors each filed Voluntary Petitions for relief under Chapter 11 of the Bankruptcy Code on September 9, 2024.
2. The restructuring plan in this case is largely a sale process.
3. Jewell Square and debtor Big Lots Stores – PNS, LLC are parties to a commercial real property lease for the property located at 7777 W Jewell Ave. Lakewood, Colorado (the “Lease”).
4. Jewell Square has been sending pleadings filed in this case and other documents (including correspondence) that it receives to its real estate counsel upon receipt. Jewell Square was, however, unaware of having received the Notice of Proposed Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amount (the “Notice;” Docket No. 683). A review of Jewell Square’s property manager’s email files conducted earlier today revealed that, inter alia, the Notice, had gone into her spam folder.
5. In addition, the Debtors have regularly been in contact with Jewell Square indicating that the Debtors would not assume and assign the Lease unless Jewell Square makes rent concessions on the Lease. The most recent correspondence was sent by the Debtors to Jewell Square on November 5, 2024 indicating Jewell Square had until November 10, 2024 to determine whether it would make such concessions. *See* Exhibit A. Other representative correspondence are attached hereto as Exhibit B.

6. Based upon not having received the Notice and the correspondence the Debtors were sending to Jewell Square, Jewell was under the impression the Lease would not be assumed unless concessions were made by Jewell Square. Jewell Square is unwilling to make any concessions on the Lease and therefore anticipated the Lease would not be included in the sale process.

7. Pursuant to the Notice, objections to cure amounts listed in the Notice were due November 6, 2024 (the “Objection Deadline”).

8. On November 7, 2024, Jewell Square filed its Objection to the cure amount with respect to the Lease (the “Cure Objection”).

9. Jewell Square learned of the Objection Deadline when it saw objections to cure were being filed and engaged undersigned counsel.

10. The hearing on cure objections was set for November 12, 2024. However, on November 7, 2024, the Debtors filed their Amended Notice of Hearing Agenda indicating that the hearing on the cure objections had been continued indefinitely. On November 8, 2024, the Debtors filed a Second Amended Notice of Hearing Agenda indicating the hearing on November 12, 2024 had been vacated and no matters with respect to the proposed sale would be proceeding.

### **ANALYSIS**

#### **I. Bankruptcy Rule 9006(b)(1) and the Excusable Neglect Standard**

11. Bankruptcy Rule 9006(b)(1) provides in pertinent part:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion ... (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

12. Thus, the plain language of Bankruptcy Rule 9006(b)(1) requires the filing of a motion showing cause and establishing that the failure to act was the result of excusable neglect.

13. Neither the Bankruptcy Rules nor the Bankruptcy Code define “excusable neglect.” *See e.g., Matter of Lewis*, 93 B.R. 462, 467 (Bankr. S.D. Miss. 1987). “Rather, it is a flexible concept and has become a term of art, subject to interpretation by the trier of facts and has been defined as: ‘... the failure to timely perform a duty due to circumstances which were beyond the reasonable control of the person whose duty it was to perform.’” *Id.* (quoting *In re Manning*, 4

B.C.D. 304, 305 (Bankr.D.Conn. 1978)).

14. In determining whether “excusable neglect” exists, courts consider the following factors:

[T]he danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

*Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993).

15. In determining whether “excusable neglect” exists, courts also consider “whether the mistake was a single unintentional incident (as opposed to a pattern of deliberate dilatoriness and delay). *Jennings v. Rivers*, 394 F.3d 850, 857 (10th Cir. 2005); *In re Conlon*, No. 13-10603, 2013 WL 5230707, at \*2 (Bankr. D.R.I. June 17, 2013) (finding excusable neglect where “[c]ounsel’s delayed confirmation objection by only a few days was a singular incident in this case.”); *In re Gutschow*, 2010 Bankr.LEXIS 1314, at \*6 (Bankr.D. Neb. April 19, 2010) (finding excusable neglect despite counsel’s oversight because “counsel has not run afoul of other deadlines in this case.”); *Perry v. Wolaver*, 2006 U.S. Dist. LEXIS 23234 (D. Me. April 24, 2006) (finding excusable neglect because counsel’s oversight in timely filing a response to a motion for summary judgment was an isolated incident).

16. The burden of proving excusable neglect lies with the late filing party. *See In re Enron Corp.*, 419 F.3d 115, 121 (2d Cir. 2005).

17. Each of the elements of excusable neglect is satisfied,  
*The Late Filed Objection to Cure was a Single Unintentional Act.*

18. Jewell Square did not realize that it had received the Notice until a search of the spam folder was conducted earlier today. Based upon the correspondence Jewell Square had received from the Debtors it was under the impression that the Lease would not be assumed or included in the sale process unless Jewell Square made lease concessions. As set forth in the Exhibit A, Jewell Square had until November 10, 2024, *four days after the objection deadline*, to decide whether to make such concessions. Jewell Square had already determined that it would not make any concessions.

19. Thus, Jewell Square had every reason to believe that the Lease would not be assumed as a part of the sale process. Jewell Square was reasonable in assuming that nothing

would occur with respect to assumption of the Lease prior to November 10, 2024.

20. Thus, Jewell Square's missing of the Objection Deadline by one day was unintentional.

21. The late filing was the first time that Jewell Square was late in filing any document in these cases. Thus, the filing of the Cure Objection by one day after the Objection Deadline was a single unintentional act.

*There is No Danger of Prejudice to the Debtors.*

22. The Cure Objection was one day late. The hearing on the cure objections has been postponed indefinitely. There is nothing proceeding with respect to the sale in the immediate. The Debtors, in their Second Amended Notice of Hearing Agenda (Docket No. 1045) identifies one-hundred and sixty-two objections to the Debtors' asserted cure amounts. The Second Amended Notice of Hearing Agenda does not include the Cure Objection. Such a large number of cure objections may be an indication the Debtors were not careful or accurate in the listing of the cure amounts in the Notice.

23. Whether there are 162 or 163 cure objections will not cause any additional burdens upon the Debtors. This is particularly true since the hearing on the cure objections has been indefinitely postponed. Further, resolution of the Cure Objection is simple, identify the correct cure amount for Jewell Square.

24. By contrast, Jewell Square will be prejudiced if the Cure Objection is not heard. The Debtors assert the cure amount is \$16,773.77 when the correct cure amount is \$44,289.50. It is not news to the Debtors that the \$16,773.77 amount is incorrect since Jewell Square had prior communications with Debtors regarding the outstanding balance and that monthly billing statements reflecting Debtor's arrearages were provided on a monthly basis prior to Debtors' bankruptcy filing.

*The Length of Delay*

25. The length of delay was nominal, one day.

*The Reason for Delay*

26. The reason for the delay is detailed herein. If there is anyone to blame for the delay, it rests with the confusion the Debtors created with its correspondence with Jewell Square. Jewell Square has acted in good faith. Once it learned of the Objection Deadline it promptly filed its

objection. In addition to serving the Cure Objection via ECF, Jewell Square, through counsel, emailed every service party listed in the Notice at the email address listed in the Notice on November 7, 2024.

**CONCLUSION**

WHEREFORE Jewell Square respectfully requests that the Court enter an Order, a proposed form is filed herewith, allowing the late filing of the Cure Objection as if it were timely filed and for such other and further relief as the Court deems just.

Dated: November 14, 2024.

Respectfully submitted,

/s/ Aaron Garber

Aaron A. Garber DE #3837 (CO # 36099)

**Wadsworth Garber Warner Conrardy, P.C.**

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Email: [agarber@wgwc-law.com](mailto:agarber@wgwc-law.com)

**EXHIBIT A**

**Aaron Garber**

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**From:** Amanda Halstead <ahh@mhzlegal.com>  
**Sent:** Friday, November 8, 2024 7:47 AM  
**To:** Aaron Garber  
**Subject:** Exhibit - Big Lots 4341 Lakewood  
**Attachments:** CEO Letter.pdf

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**From:** Susan Ciancanelli <susan@agrep.com>  
**Sent:** Tuesday, November 5, 2024 8:27 AM  
**To:** Blake Kahlich <blake@primesqft.com>  
**Subject:** Big Lots 4341 Lakewood

Good morning,

I am aware that you have discussed this lease with my colleague, Allie Graiser, but I wanted to give you an update with regard to the bankruptcy and sale of the company.

Attached is a letter from Bruce Thorn, CEO of Big Lots which I will summarize below.

The bid process and auction are now complete and Nexus is the winner and is filing papers with the court.

Nexus is scheduled to take assignment of leases that they are moving forward with on December 2 or 3. That is a hard deadline that will not be extended.

I also want to let you know that if you have reconsidered your decision now that the sale has gone through, I am more than happy to have another discussion with you.

**I want to make sure that you know that the last day that we can submit any terms for approval is November 10.** After that day, no other terms can be submitted and the Nexus will then make decisions on those locations where there was no assistance. Stores will continue to be added to the close list. If your location is already on a close list, then now is the time to try and save it. I cannot guarantee that it will be saved, but by doing nothing, the going out of business sale will continue and will close.

Again, I urge you to consider assisting at this time and I am more than happy to have a conversation and give you my opinion of what is needed. I would appreciate your final response as soon as possible as we only have approximately one week to come to terms.

Regards,  
Sue

**Susan Ciancanelli**  
**Sr. Managing Director | A&G Real Estate Partners**  
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Melville NY 11747  
Mobile: 631.626.1127

[susan@agrep.com](mailto:susan@agrep.com)  
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**URGENT: FINAL CHAPTER 11 COMMUNICATION TO LANDLORDS FROM BIG LOTS CEO**

Dear Big Lots Landlord,

On September 9, 2024, Big Lots commenced Chapter 11 proceedings to facilitate a sale of the Company. Following the initial announcement, I conducted a call with the Company's landlords to share Big Lots' transformative path forward and introduce you to A&G Real Estate Partners. A&G has been assisting us with our ongoing store-by-store analysis and helping to ensure that we move ahead with the right go-forward footprint. To that end, out of our 1,400 stores, we have already closed or announced to close 550 stores and 2 distribution centers.

Following our call, A&G reached out to you with a proposal regarding our lease with the goal of reaching a mutually agreeable resolution. **Unfortunately, we have not reached agreement and wanted to make you aware that Big Lots' restructuring will soon be ending and certain actions are required.**

**SALE PROCESS CONCLUDING SOON**

Recently, we announced that Nexus Capital Management was selected as the winning bidder to acquire Big Lots. As you may recall, when we began the sale and restructuring process, we did so with an offer from Nexus to acquire the Company, noting that Nexus's offer was subject to higher or otherwise better offers from third parties. Upon completing a competitive sale process, we determined that Nexus's bid was ultimately the highest and best bid and we intend to move full speed ahead with the sale to Nexus.

As I previously noted, Nexus is an investment firm with an established track record of partnering with companies and their teams to create long-term value. They have invested in a number of companies across various industries, including consumer-facing companies such as FTD, Toms, Mav Beauty, and Dollar Shave Club. Importantly, the Nexus team recognizes Big Lots' potential and we are thrilled to partner with them as they support us in achieving our mission of returning our iconic brand to its status as America's leading extreme value retailer.

In terms of next steps, we will seek Court approval for the sale at a hearing that is currently scheduled to be held on November 12, and anticipate closing the transaction in early December. Until then, we will continue to operate as we have throughout this process and closely monitor performance in our stores.

**WE NEED YOUR COOPERATION**

Given the short timeframe that we have, it is critical for us to be able to consider your lease for assumption and inclusion as part of the go-forward business. As part of this, we are asking for concessions so that our remaining locations can be viable operating stores and we can become a stronger credit tenant to you.

**This is not a wait and see moment, but a time to put your final and best deal on the table.**



As you know, with every retail restructuring, the need for short-term support is critical. Many of our landlords have recognized the difficult choice in front of them between absorbing some financial compromise associated with a lease amendment or losing out on a reliable and strong tenant. Landlords of properties that were on the verge of receiving lease rejections have stepped forward with concessions that have secured our partnership with them on a post-emergence basis.

To ensure that your store location is included in our go-forward plans, your lease amendments will need to be fully executed no later than November 22. **Please reach out to A&G as soon as possible to discuss our path forward.**

Please note that as we await your response, we will continue to implement our store optimization plan and close additional store locations. We are focused on ensuring that we have the right stores in the right locations so that we can be successful and better serve the needs of our customers. Big Lots will run the going-out-of-business sales for those affected stores and A&G will market those leases. To date, over 50 leases have been purchased.

We sincerely hope you will work with us to be part of our future. Thank you very much for your continued support. We look forward to being your tenant for many years to come.

Best,

Bruce Thorn  
President & CEO

**EXHIBIT B**

**Aaron Garber**

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**From:** Amanda Halstead <ahh@mhzlegal.com>  
**Sent:** Friday, November 8, 2024 7:50 AM  
**To:** Aaron Garber  
**Subject:**  
**Attachments:** Big Lots Landlord Letter - 4341 (LAKEWOOD, COLORADO).pdf

**From:** Dwyer, Susan <[susan.dwyer@davispolk.com](mailto:susan.dwyer@davispolk.com)>  
**Sent:** Tuesday, October 8, 2024 11:18:56 AM  
**To:** Blake Kahlich <[blake@primesqft.com](mailto:blake@primesqft.com)>  
**Subject:** Big Lots – Correspondence Regarding Lease

To Whom This May Concern – Please find attached a letter from counsel to Big Lots, Inc.

**DavisPolk**

Adam L. Shpeen  
+1 212 450 4169  
adam.shpeen@davispolk.com

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
davispolk.com

CONFIDENTIAL

October 7, 2024

Re: *In re Big Lots, Inc., et al*, Case No. 24-11967 (JKS) (Bankr. D.N.J.)  
Store # 4341

**VIA E-MAIL:**

blake@primesqft.com

To Whom It May Concern:

We represent Big Lots, Inc. and its affiliates (collectively, the "Debtors") in connection with their pending cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Debtors commenced their chapter 11 cases on September 9, 2024 (the "Petition Date"). Pursuant to that certain lease agreement (the "Lease") between one of the Debtors and you (the "Landlord"), the Debtors lease the premises located at 7777 W JEWELL AVE, LAKEWOOD, COLORADO 80232 (the "Premises").

As you may be aware, the Debtors are working with A&G Realty Partners, LLC ("A&G") as their real estate consultant to engage with the Debtors' landlords to, among other things, negotiate the terms of potential go-forward leases in the coming weeks. These negotiations are occurring on an accelerated timeline so that they have been completed in advance of the Debtor's sale of all of their assets to a buyer, which is currently expected to close next month. Rent concessions and other modifications to existing lease terms will be critical in determining whether leases are to be assumed and assigned to the eventual buyer of the Debtors' assets, or rejected.

In the few weeks since the filing of the Debtors' chapter 11 cases, the Debtors have already made progress in right-sizing their store footprint by identifying leases that do not fit into the Company's go-forward operations or where the lease economics make continued operations unprofitable. For example, the Debtors have identified 444 stores where they are conducting store closing sales [Docket Nos. 124-1, 239-1, 424-1], and pursuant to the Debtors' *Motion for Entry of an Order (I) Authorizing Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property and (II) Authorizing and Establishing Procedures to Reject Executory Contracts and Unexpired Leases* [Docket No. 17], the Debtors have already sought to reject 79 leases.

This letter is written to inform you that negotiations between you and A&G to reach agreement with respect to certain modifications to the Lease have, to date, been unsuccessful. The Debtors would like to continue leasing the Premises and to include the Premises in their go-forward business strategy, but absent modifications to the Lease they may not seek to assume and assign to their eventual buyer the Lease or continue operating a store on the Premises. If the Debtors are unable to reach an agreement with you regarding an acceptable Lease amendment, on or before November 1, 2024, the Debtors intend to decide shortly thereafter whether to close their store at the Premises and market the lease for sale.

In the meantime, we invite you to engage with A&G (specifically Mike Elleman at Melleman@agrep.com) to discuss the Lease.

[Remainder of this page intentionally left blank]

**DavisPolk**

CONFIDENTIAL

Sincerely,

Adam L. Shpeen

**Aaron Garber**

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**From:** Amanda Halstead <ahh@mhzlegal.com>  
**Sent:** Friday, November 8, 2024 7:52 AM  
**To:** Aaron Garber  
**Subject:** A&G Intro- Store #4341- Lakewood

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**From:** Mike Elleman <[MElleman@agrep.com](mailto:MElleman@agrep.com)>  
**Sent:** Monday, September 16, 2024 9:07 AM  
**To:** Blake Kahlich <[blake@primesqft.com](mailto:blake@primesqft.com)>  
**Subject:** Re: Big Lots Bankruptcy- A&G Intro- Store #4341- Lakewood

Blake-

My sincere apologies for following up in the midst of your family emergency, but, I need to hear from you or someone in your office in the next day or two. This store is now on a list of stores that will close unless we are able to agree upon acceptable rent concessions. If it closes, the lease will not necessarily be rejected allowing the landlord to recapture the space. The lease will be marketed and potentially sold to another retailer, which may not have good credit or match the merchandising character of your center. I urge you to please have someone get back to me with available times to discuss what needs to be done to save this store.

Thanks,  
Mike

*Michael Elleman*  
*A&G Real Estate Partners*  
239-298-4220  
[www.agrep.com](http://www.agrep.com)



On Sep 10, 2024, at 1:24 PM, Blake Kahlich <[blake@primesqft.com](mailto:blake@primesqft.com)> wrote:

Mike,

I'm out of town on a family emergency, but I forwarded this email to other people in the office. Thank you very much.

Blake Kahlich  
Prime Management LLC  
1888 Sherman Street, Suite 500  
Denver, CO 80203  
M 303.319.9079

**From:** Mike Elleman <[MElleman@agrep.com](mailto:MElleman@agrep.com)>  
**Sent:** Tuesday, September 10, 2024 10:17:28 AM  
**To:** Blake Kahlich <[blake@primesqft.com](mailto:blake@primesqft.com)>  
**Subject:** Big Lots Bankruptcy- A&G Intro- Store #4341- Lakewood

Good afternoon, Blake-

I am reaching out to you on behalf of Big Lots following the landlord call. If you were unable to join the call, the replay information is:

Replay Dial-In: 877-660-6853 / 201-612-7415

**Access ID: 13748793**

It is important for you to listen to the call before we speak.

A&G Real Estate Partners was retained by the company as their real estate advisors and will be working through the negotiations with all the landlords. Attached is the company proposal in the form of a lease amendment. As the company is making store closing decisions over the next few weeks it is important that we speak as soon as possible. Please let me know a few windows of time you have available to speak this week.

I look forward to connecting and working with you on this matter in which time is of the essence. If you are not the correct contact, I would appreciate you pointing me in the right direction.

Thanks,

Mike

*Michael Elleman*  
*A&G Real Estate Partners*  
*239-298-4220*  
[www.agrep.com](http://www.agrep.com)



UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: )  
 ) Case No. 24-11967-JKS  
BIG LOTS, et al. )  
 ) Chapter 11  
Debtors. )  
 ) Objections due by: November 28, 2024  
 ) Hearing date: December 19, 2024 at 2:00 p.m.

**NOTICE OF MOTION TO ALLOW LATE FILING OF OBJECTION OF  
JEWELL SQUARE, RLLP TO CURE AMOUNT**

TO: Attached Service List

Jewell Square, RLLP have filed a Motion to Allow Late Filing of Objection of Jewell Square, RLLP which seeks the following relief: The movants seek to transfer the venue of this case from Delaware to Colorado.

You are required to file a response to the attached motion on or before **NOVEMBER 28, 2024**. If the Motion is a Motion filed pursuant to Local Rule 9013-1, responses may be presented orally at the hearing.

At the same time, you must also serve a copy of the response upon movant's attorney:

Aaron A. Garber  
Wadsworth Garber Warner Conrardy, P.C.  
2580 West Main Street, Suite 200  
Littleton, CO 80120  
Telephone: (303) 296-1999  
Telecopy: (303) 296-7600  
Email: agarber@wgwc-law.com

HEARING ON THE MOTION WILL BE HELD ON IF YOU FAIL TO RESPOND IN  
ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF

DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING

DATED: November 14, 2024

Respectfully submitted,

By: /s/ Aaron A. Garber

Aaron A. Garber (Colorado Bar No. 36099;  
Delaware Bar No. 3837)

**Wadsworth Garber Warner Conrardy, P.C.**

2580 West Main Street, Suite 200

Littleton, CO 80120

Telephone: (303) 296-1999

Telecopy: (303) 296-7600

Email: agarber@wgwc-law.com

## **CERTIFICATE OF SERVICE OF MOTION, NOTICE AND PROPOSED ORDER**

The undersigned certifies that on November 14, 2024, I served by ECF a copy of the **MOTION TO ALLOW LATE FILING OF OBJECTION OF JEWELL SQUARE, RLLP TO CURE AMOUNT, notice, and order** on all parties against whom relief is sought and those otherwise set forth below:

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